

REMARKS

Claims 1 and 6 currently appear in this application. The Office Action of February 12, 2008, has been carefully studied. These claims define novel and unobvious subject matter under Sections 102 and 103 of 35 U.S.C., and therefore should be allowed. Applicant respectfully requests favorable reconsideration, entry of the present amendment, and formal allowance of the claims.

Amendment

Claim 1 has been amended to recite hybridization conditions based upon the copy submitted herewith of *Molecular Cloning: A Laboratory Manual*, 2<sup>nd</sup> ed. (1989), pages 9.47-9.55, cited in the specification at page 21, lines 21-25. The hybridization temperature is disclosed in 9.47, lines 6-7 and the washing conditions are disclosed in 9.54, lines 16-31.

Rejections under 35 U.S.C. 112

Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner states that SEQ ID NO:2 is an amino acid sequence. For examination purposes, the Examiner will assume that the claim should read "SEQ ID NO:1."

This rejection is respectfully traversed. SEQ ID NO:2 as originally filed was a nucleotide sequence. However, when the sequence listing was amended to respond to Notification of Defective Response, it was erroneously changed to an amino acid sequence, possibly due to confusion of the nucleotide codes with the one-letter codes of amino acids. In fact, WO publication of the present application shows SEQ ID NO:2 as a nucleotide sequence.

Submitted herewith is a corrected sequence listing in which SEQ ID NO:2 is correctly referred to as a nucleotide sequence.

The following statement is provided to meet the requirements of 37 C.F.R. §1.825(a) and 1.825(b).

I hereby state, in accordance with 37 C.F.R. §1.825(a), that the amendments included in the substitute sheets of the sequence listing are believed to be supported in the application as filed and that the substitute sheets of the sequence listing are not believed to include new matter.

I hereby further state, in accordance with 37 C.F.R. §1.825(b), that the attached copy of the computer readable form is the same as the attached substitute paper copy of the sequence listing.

Applicants submit that the present application contains patentable subject matter and therefore urge the examiner to pass the case to issuance.

Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The Examiner alleges that the genus of polynucleotides recited can potentially encompass polynucleotides which are 29% sequence identical to the polypeptide of SEQ ID NO:1.

This rejection is respectfully traversed. The polypeptide of amended claim 1(b) is a polypeptide encoded by a nucleic acid hybridizing to nucleotide sequence of SEQ ID NO:2 by washing at 68°C. When the  $T_m$  of nucleotide sequence of SEQ ID NO:2 is calculated according to the equation disclosed at page 3, lines 15-16 of the Office Action,  $81.5 + 16.6 \times \log_{10} [3.9 \times 0.1/2.0] + 0.41 (243/636) - 61 (\% \text{ form } = 0) - 500/636 = 68^\circ\text{C}$ . Therefore, it is respectfully submitted that the washing at 68°C is washing under extremely stringent conditions. Therefore, it is respectfully submitted that the enablement requirement has been met.

#### Art Rejections

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipate by Klenk et al., PIR Accession number E69327, 1997.

This rejection is respectfully traversed. The polypeptide of amended claim 1 is encoded by a nucleotide sequence that hybridizes to SEQ ID NO:2 under extremely stringent conditions. Therefore, the polypeptide of claim 1 as amended is not anticipated by Klenk.

**Allowable Subject Matter**

It is noted with appreciation that claim 6 appears to be allowable over the prior art of record.

In view of the above, it is respectfully submitted that the claims are now in condition for allowance, and favorable action thereon is earnestly solicited.

Respectfully submitted,

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